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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,630	05/26/2000	Robert McKinnon JR.	5925.36003	7855

21000 7590 07/16/2002

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/579,630

Applicant(s)

MCKINNON, ROBERT

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**P r i d f r Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 April 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disp sition of Claims**

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-6, 8-15, 17, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wischhusen et al. (U.S. 5,016,756). Wischhusen et al. teach a lid 3 made of plastic, as set forth in col. 4 lines 52-56. The upper side is element 31, the lower side is opposite the upper side. The outer edge is element 33. The recesses are elements 30. Figure 7 of Wischhusen et al. shows rectangular recesses 30 having lengths greater than one half of the “given dimension” of the member.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wischhusen et al. in view of Bonnema et al. (U.S. 4,726,490). Wischhusen et al. disclose the claimed invention except for the wedges. Bonnema et al. teach that it is known to provide a container member with wedges (see elements 45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Wischhusen et al. with the wedges of Bonnema et al., in order to securely fasten the lid to the tray and prevent any lateral shifting of the lid with respect to the tray.

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5. Claims 16, 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wischhusen et al. in view of Frank (U.S. 5,671,846). Wischhusen et al. disclose the claimed invention except for the differently sized recesses. Frank teach that it is known to provide a container member with differently sized recesses (see figures 2 and 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Wischhusen et al. with the differently sized recesses, as taught by Frank, in order to store differently sized containers and portions within the tray.

6. Claims 20 and 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wischhusen et al. in view of Conti (U.S. 4,279,354). Wischhusen et al. disclose the claimed invention except for the triangle shape of the recess. Conti teach that it is known to provide a container member with triangle shaped recesses(see figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Wischhusen et al. with a recess having a triangle shape, as taught by Conti, in order to accommodate containers having a similar configuration.

7. Claims 21, 22 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wischhusen et al. in view of Conti, as applied to claims 20 and 31 above, and further in view of Frank (U.S. 5,671,846). The modified lid of Wischhusen et al. disclose the claimed invention except for the differently sized recesses. Frank teach that it is known to provide a container member with differently sized recesses (see figures 2 and 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid of Wischhusen et al. with the differently sized recesses, as taught by Frank, in order to store differently sized containers and portions within the tray.

8. Claims 23, 24 and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wischhusen et al. in view of Conti (U.S. 4,279,354) and Frank (U.S. 5,671,846). Wischhusen et al. disclose the claimed invention except for the triangle shape of the recess and for the recesses having

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different sizes. Conti teach that it is known to provide a container member with triangle shaped recesses(see figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Wischhusen et al. with a recess having a triangle shape, as taught by Conti, in order to accommodate containers having a similar configuration.

Frank teach that it is known to provide a container member with differently sized recesses (see figures 2 and 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid of Wischhusen et al. with the differently sized recesses, as taught by Frank, in order to store differently sized containers and portions within the tray.

9. Claims 1, 5, 18, 23, 25, 26, 31 and 36-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg et al.(U.S. 5,544,974) in view of Kristoffersson (U.S. 5,685,452). Berg et al. disclose the claimed invention except for the lid being made of plastic. Kristoffersson teaches that it is known to provide a reinforced container member made of plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid 156 of Berg et al. made of plastic, as taught by Kristoffersson, in order to give the lid the lightweight and strength properties characteristic of plastic.

It also would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid 156 of Berg et al. with differently shaped recesses, as taught by Kristoffersson, in order to give the lid an alternative appearance while retaining the reinforced strength of the lid.

#### ***Response to Arguments***

10. Applicant's arguments filed April 30, 2002 have been fully considered. In response to applicant's argument that Wischhusen et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to

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the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Both the present invention and the invention of Wischhusen et al. are directed to closures with recesses.

11. Applicant's arguments with respect to the limitation that the lid can support a load of 8,000 pounds have been considered but are moot in view of the new grounds of rejection. The new grounds of rejection were necessitated by the amendment filed April 30, 2002.

### *Conclusion*

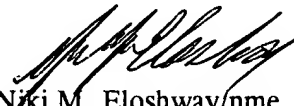
12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

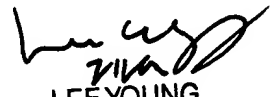
13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Niki M. Eloshway/nme  
Patent Examiner  
July 6, 2002



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